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7 Attorneys for Plaintiffs, Board of Directors
8 of the Motion Picture Industry Pension Plan, et al.

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **Western Division**

13
14 BOARD OF DIRECTORS OF THE
15 MOTION PICTURE INDUSTRY
16 PENSION PLAN; BOARD OF
17 DIRECTORS OF THE MOTION
18 PICTURE INDUSTRY
INDIVIDUAL ACCOUNT PLAN;
BOARD OF DIRECTORS OF THE
MOTION PICTURE INDUSTRY
HEALTH PLAN,

19 Plaintiffs,

20 vs.

21 SIGN SET, INC., a California
22 corporation,

23 Defendant.

CASE NO.

**COMPLAINT FOR BREACH OF
CONTRACT AND VIOLATION OF
ERISA**

[29 U.S.C. §§1132, 1145
29 U.S.C. §185]

1 Plaintiffs allege as follows:

2 JURISDICTION

3 1. Jurisdiction is conferred upon this court by the Employee Income
4 Retirement Security Act of 1974 as amended ("ERISA"), 29 U.S.C. §1001,
5 *et seq.*, and by section 301(a) of the Labor-Management Relations Act of 1947 as
6 amended ("LMRA"), 29 U.S.C. §185(a).

7 VENUE

8 2. In accordance with ERISA §502(e) (29 U.S.C. §1132(e)), venue is
9 appropriate in the Central District of California as the place where the Plans are
10 administered, and where the contractual obligations alleged herein are to be
11 performed.

12 PARTIES

13 3. Plaintiffs, the Boards of Directors of the Motion Picture Industry
14 Pension Plan, the Motion Picture Industry Individual Account Plan, and the
15 Motion Picture Industry Health Plan (herein "Plaintiffs"), are each the duly
16 selected governing bodies of their respective jointly administered Labor-
17 Management Trust Funds that were created and are maintained pursuant to section
18 302(c)(5) of the LMRA (29 U.S.C. §186(c)(5)).

19 4. The Motion Picture Industry Pension Plan ("Pension Plan") and the
20 Motion Picture Industry Individual Account Plan ("IA Plan") are "employee
21 pension benefit plans" as defined ERISA §3(2) (29 U.S.C. §1002(2)). The Motion
22 Picture Industry Health Plan ("Health Plan") is an "employee welfare benefit plan"
23 as defined in ERISA §3(1) (29 U.S.C. §1002(1)). The Pension Plan, IA Plan, and
24 Health Plan (collectively referred to herein as "the Plans") are "multiemployer
25 plans" within the meaning of ERISA §§3(37)(A) and 515 (29 U.S.C.
26 §1002(37)(A); 29 U.S.C. §1145). Plaintiffs are fiduciaries with respect to the
27 Plans within the meaning of ERISA §21(A) (29 U.S.C. §1002(21)(A)). The Plans
28 were established pursuant to collective bargaining agreements between various

1 employers and employer associations performing work in the entertainment
2 (motion picture and television) industry, the International Alliance of Theatrical
3 Stage Employees and Moving Picture Machine Operators of the United States and
4 Canada, AFL-CIO ("IATSE"), an unincorporated labor organization. The Plans
5 are administered in Studio City, California.

6 5. Plaintiffs are informed and believe and thereon allege that defendant
7 Sign Set, Inc. ("Sign Set") is a California corporation with its principal place of
8 business located at 2173 Crescent Avenue, Montrose, California 91020, within the
9 County of Los Angeles.

10 6. At all relevant times herein, Sign Set has been an employer in an
11 industry affecting commerce, within the meaning of the LMRA and ERISA.

12 7. This complaint is prosecuted pursuant to section 301(a) of the
13 LMRA, and ERISA §§502 and 515, to enforce the provisions of ERISA against an
14 employer engaged in an industry affecting commerce.

15 FIRST CLAIM FOR RELIEF

16 BREACH OF CONTRACT

17 (By All Plaintiffs Against Defendant Sign Set)

18 8. On or about September 8, 2010, Sign Set executed an Agreement of
19 Consent whereby it agreed to become party to and be bound by the following
20 collective bargaining agreements:

21 A. the Producer-IATSE Basic Agreement between the Alliance of
22 Motion Picture and Television Producers, Inc. ("AMPTP") and IATSE and its
23 West Coast Studio Locals ("Producer-IATSE Basic Agreement");

24 B. the Videotape Electronics Supplemental Basic Agreement
25 between IATSE and AMPTP ("Videotape Agreement"); and

26 C. the Trust Agreements established pursuant to the above-named
27 collective bargaining agreements, including the Pension Plan, the IA Plan and the
28 Health Plan. A true and correct copy of the Agreement of Consent executed by

1 Sign Set is attached hereto as Exhibit “1” and incorporated herein by this
2 reference.

3 9. In conjunction with the execution of the Agreement of Consent, Sign
4 Set executed a Trust Acceptance, agreeing to be bound by all terms and conditions
5 of the Trust Agreements establishing the Pension Plan, the IA Plan and the Health
6 Plan (“Trust Agreements”), and to contribute to the Plans on behalf of each
7 employee covered by the Agreement of Consent. A true and correct copy of the
8 Trust Acceptance executed by Sign Set is attached hereto as Exhibit “2” and
9 incorporated herein by this reference.

10 10. The Agreement of Consent and Trust Acceptance (collectively
11 referred to herein as the “Sign Set Agreements”) and Trust Agreements were in
12 full force and effect during all times relevant herein.

13 11. The Trust Agreements obligate Sign Set to forward a single,
14 combined weekly remittance report, together with contributions owed to the Plans
15 for the total hours worked by or guaranteed to all employees covered by the Sign
16 Set Agreements, by the last day of the week following the week in which work
17 was performed. Contributions are delinquent if they are not received within five
18 (5) days from the date such contributions become due.

19 12. Pursuant to the terms of the Trust Agreements, Sign Set agreed that in
20 the event of a delinquency it would pay liquidated damages. The Trust
21 Agreements for each of the Plans provide for payment of liquidated damages in
22 addition to payment of any delinquent contribution or any interest, in an amount
23 presumed to be the greater of 20 percent (20%) of the amount of contributions
24 due; or the amount of interest due under the above provisions of this Article on the
25 date when payment is made.

26 13. The Trust Agreements further provide that in the event of a
27 delinquency, Sign Set shall be liable to the Plans, in addition to contributions, and
28 liquidated damages, for all expenses of collection, including all costs, reasonable

1 accountants' fees, auditors' fees and attorneys' fees, and for the payment of
2 interest at the accruing at the rate of 1 percent (1%) per month on all unpaid
3 contributions.

4 14. Plaintiffs are informed and believe and upon that basis allege that
5 Sign Set employed persons who performed work covered under the Sign Set
6 Agreements and Trust Agreements for the production of various titles, but failed
7 to report and pay contributions to the Plans for these covered employees.

8 15. Pursuant to the terms of the Sign Set Agreements and Trust
9 Agreements, the Plans completed and published an audit of the records of Sign Set
10 on September 30, 2016 (the "Audit"). The Audit disclosed for the first time that
11 Sign Set failed to report and pay contributions in the sum of \$69,695.66 based on
12 hours worked by its employees on various productions for the period of April 22,
13 2012 to April 23, 2016. Prior to the audit, Plaintiffs were unaware that Sign Set
14 had failed to properly report and pay contributions.

15 16. To date, the Plaintiffs have incurred expenses of \$3,975.00 in
16 auditing Sign Set' records.

17 17. At all times mentioned herein, it was and now is impracticable and
18 extremely difficult to fix the amount of actual damage to the Plaintiffs as a result
19 of nonpayment of contributions. The amount agreed upon in the Trust
20 Agreements, as and for liquidated damages, represented and now represents a
21 reasonable endeavor to ascertain and compensate for the damages caused to the
22 Plans by the nonpayment of contributions.

23 18. As a result of Sign Set's failure to report and pay contributions, it has
24 been necessary for the Plans to employ the law firm of Wohlner Kaplon Cutler
25 Halford & Rosenfeld, and Plaintiffs have incurred attorneys' fees.

26 19. As a result of Sign Set's breach of the Sign Set Agreements and Trust
27 Agreements, Plaintiffs have been damaged in an amount equal to the amount of
28 contributions, liquidated damages, interest, reasonable attorneys' fees and all

1 costs, including audit costs, incurred in enforcing the terms of the Sign Set
2 Agreements and Trust Agreements.

3 20. Plaintiffs have complied with all conditions precedent, if any, to be
4 performed under the terms of the Sign Set Agreements.

5 SECOND CLAIM FOR RELIEF

6 VIOLATION OF ERISA

7 (By All Plaintiffs Against Defendant Sign Set)

8 21. Plaintiffs incorporate by reference each and every allegation
9 contained in paragraphs 1 through 20, as though fully set forth herein.

10 22. By failing to accurately report and pay contributions to the Plans in
11 accordance with the provisions of the Sign Set Agreements and the Trust
12 Agreements, Sign Set has violated ERISA §515. Therefore, in accordance with the
13 terms of the Sign Set Agreements and Trust Agreements and pursuant to ERISA
14 §§502(g)(2) and 515, Plaintiffs are entitled to, and hereby demand, payment of all
15 contributions determined to be due, liquidated damages, interest, reasonable
16 attorneys' fees and all costs, including audit costs, incurred in enforcing the terms
17 of the Sign Set Agreements and Trust Agreements, and such other legal and
18 equitable relief as the Court deems appropriate.

19 WHEREFORE, Plaintiffs pray for judgment against Defendant Sign Set,
20 Inc., a California corporation, as follows:

21 ON THE FIRST AND SECOND CLAIMS FOR RELIEF

22 1. For unpaid contributions in the sum of \$69,695.66 as first disclosed
23 by the Plans' audit;

24 2. For payment of interest calculated at the rate of one percent (1%) per
25 month on all unpaid audit contributions owed from the due dates until paid;

26 3. For payment of liquidated damages in an amount presumed to be the
27 greater of twenty percent (20%) of the amount of contributions due, or the amount
28 of interest calculated at the rate of one percent (1%) per month until paid;

1 4. For payment of audit costs in the sum of \$3,975.00;

2 5. For attorneys' fees and costs incurred in this action; and

3 6. For such other relief as the court deems appropriate, including other
4 appropriate legal and/or equitable relief in accordance with ERISA §502(g)(2)(E).

5 DATED: March 3, 2017

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9
10 By: /s/ Nicholas I. Starkman

NICHOLAS I. STARKMAN

11 Attorneys for Plaintiffs the Boards of
12 Directors of the Motion Picture
13 Industry Pension Plan, the Motion
14 Picture Individual Account Plan, and
15 the Motion Picture Industry Health
16 Plan
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